Wasserman Schultz	Waxman	Wu
Watson	Weiner	Wynn
Watt	Wexler	
	Woolsey	

NOT VOTING—26

Brown (OH)	Evans	Strickland
Burgess	Fattah	Thompson (MS)
Burton (IN)	Hoyer	Udall (CO)
Case	Lewis (GA)	Wamp
Castle	McKeon	Waters
Clay	McKinney	Wilson (SC)
Cubin	Meehan	Wolf
Doyle	Ney	Young (AK)
Ehlers	Paul	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that there are 2 minutes remaining in the vote.

□ 1100

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. EHLERS. Mr. Speaker, on rollcall No. 505 I could not vote because the First Lady, Mrs. Laura Bush, and I were dedicating the new National Garden at the Botanic Gardens, and I was not able to return to the House Chamber in time to register my vote. Had I been present, I would voted ''yea.''

PERSONAL EXPLANATION

Mr. WOLF. Mr. Speaker, on rollcall Nos. 504 and 505 I am not recorded because I was absent due to my attendance at former congressman Joel T. Broyhill's funeral. Had I been present, I would have voted ''yea.''

PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 1054, I call up the bill (H.R. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1054, the amendment in the nature of a substitute printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 4772

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Property Rights Implementation Act of 2006''.

SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CONCERNING REAL PROPERTY.

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

''(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court if the party seeking redress does not allege a violation of a State law, right, or privilege, and no parallel proceeding is pending in State court, at the time the action is filed in the district court, that arises out of the same operative facts as the district court proceeding.

''(d) In an action in which the operative facts concern the uses of real property, the district court shall exercise jurisdiction under subsection (a) even if the party seeking redress does not pursue judicial remedies provided by a State or territory of the United States.

''(e) If the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question so certified, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

''(1) is necessary to resolve the merits of the Federal claim of the injured party; and

''(2) is patently unclear.

''(f)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, which causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, which causes actual and concrete injury to the party seeking redress.

''(2) For purposes of this subsection, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable law of the United States provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

''(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

''(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

''(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile.''.

SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS.

Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by adding at the end the following: ''If the party injured seeks to redress the deprivation of a property right or privilege under this section that is secured by the Constitution by asserting a claim that concerns—

''(1) an approval to develop real property that is subject to conditions or exactions, then the person acting under color of State law is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(2) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, territory, or the District of Columbia; or

''(3) alleged deprivation of substantive due process, then the action of the person acting under color of State law shall be judged as to whether it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

For purposes of the preceding sentence, 'State law' includes any law of the District of Columbia or of any territory of the United States.''.

SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS AGAINST THE UNITED STATES.

(a) DISTRICT COURT JURISDICTION.—Section 1346 of title 28, United States Code, is amended by adding at the end the following:

''(i) If a claim brought under subsection (a) is founded upon a property right or privilege secured by the Constitution that concerns—

''(1) an approval from an executive agency to permit or authorize uses of real property that is

subject to conditions or exactions, then the United States is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(2) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim against an executive agency shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State or territory, or the District of Columbia, as the case may be; or

''(3) an alleged deprivation of substantive due process, then the United States shall be judged as to whether its action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In this subsection, the term 'executive agency' has the meaning given that term in section 105 of title 5.''.

(b) COURT OF FEDERAL CLAIMS JURISDICTION.—Section 1491 of title 28, United States Code, is amended by adding at the end the following:

''(4) If a claim brought under subsection (a) is founded upon a property right or privilege secured by the Constitution that concerns—

''(A) an approval from an executive agency to permit or authorize uses of real property that is subject to conditions or exactions, then the United States is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

''(B) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim against an executive agency shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, or territory, or the District of Columbia, as the case may be; or

''(C) an alleged deprivation of substantive due process, then the United States shall be judged as to whether its action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In this paragraph, the term 'executive agency' has the meaning given that term in section 105 of title 5.''.

SEC. 7. DUTY OF NOTICE TO OWNERS.

(a) IN GENERAL.—Whenever a Federal agency takes an agency action limiting the use of private property that may be affected by the amendments by this Act, the agency shall, not later than 30 days after the agency takes that action, give notice to the owners of that property explaining their rights under such amendments and the procedures for obtaining any compensation that may be due them under such amendments.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) the term ''Federal agency'' means ''agency'', as that term is defined in section 552(f) of title 5, United States Code; and

(2) the term ''agency action'' has the meaning given that term in section 551 of title 5, United States Code.

SEC. 8. SEVERABILITY AND EFFECTIVE DATE.

(a) SEVERABILITY.—If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to actions commenced on or after the date of the enactment of this Act.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4772 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H.R. 4772, the Private Property Rights Implementation Act. Members will recall that this bill was debated on Monday and failed under suspension of the rules, and this is the same bill that is being brought up today under a rule.

I would thus hope that all of the debate that we had for and against the bill would be incorporated by reference into the RECORD, and that Members could kind of modulate their arguments because we have heard them all before and we don't need to repeat them, as will I.

Mr. Speaker, the vast majority of Americans were outraged by a recent Supreme Court decision that severely undermined constitutionally protected property rights. The case of course is the notorious Kelo v. City of New London. In Kelo, the Supreme Court held that a city can take private property from one citizen and give it to a large corporation for economic development purposes.

I, along with Judiciary Committee Ranking Member CONYERS, led the charge to correct that terrible decision by introducing H.R. 4128, the ''Private Property Protection Act'' which passed the House of Representatives by the overwhelming bipartisan margin of 376–38. However, that bill now languishes in the other body despite overwhelming public support.

In any case, the Supreme Court's recent disregard for constitutionally protected private property is unfortunately not confined to the Kelo decision. In the case of Williamson County v. Hamilton Bank, which was reaffirmed last term in the case of San Remo Hotel v. City and County of San Francisco, the Supreme Court upheld a set of procedural rules that effectively prohibit private property owners from ever getting into Federal court to have their Federal property rights claims heard on the merits.

I congratulate again the gentleman from Ohio (Mr. CHABOT) for authoring this vitally important legislation that will finally allow property owners to defend their Federal property rights in Federal court.

This bipartisan legislation was reported out of the Judiciary Committee by a voice vote on July 12. I hope it will receive the same bipartisan support on the floor today, and urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I don't want to be controversial, but H.R. 4772 has nothing to do with Kelo. What the chairman said about it, and our agreement about it is correct; but the reason why H.R. 4772 has nothing to do with homeowners like those in Kelo is that the bill has nothing to do with eminent domain abuses. H.R. 4772 has everything to do with land developers and corporations and regulatory takings claims, and I include for the RECORD four editorials from The Washington Post, the New York Times, the Atlanta Journal Constitution and the Sacramento Bee.

[From washingtonpost.com, Sept. 29, 2006]

TAKE IT BACK

THE HOUSE MOVES A RADICAL BILL TO HOBBLE LOCAL LAND-USE RULES

The House of Representatives is scheduled to take up today a terrible piece of legislation designed to strengthen the hands of developers in their battles with government. Congress considered and rejected a similar bill in 1997 and again in 2000. Now it's back—only worse.

The bill deals with legal claims under the ''takings'' doctrine—a requirement of the Fifth Amendment under which government has to compensate property holders when it seizes their land. Under current law, landowners must give local governments a chance to resolve such disputes and state courts a fair chance to adjudicate them before bringing the federal courts into the picture. The House bill would let developers make federal courts their first stop. This would give developers a big club to wield over local policymakers, gum up the federal courts with local land-use disputes, and diminish the rightful autonomy of state and local governments on the most local of questions.

Then—and here's where this year's bill is even worse than its predecessors—the substantive rules concerning takings and other constitutional challenges to land-use regulations also would be changed in developers' favor. Right now, federal courts are leery of such challenges in land-use cases, generally deferring to local authorities. Under this proposal, however, they would have to invalidate as a violation of due process any local decision that was ''arbitrary, capricious, [or] an abuse of discretion.'' The bill, in short, would make it easier for landowners to get into court and, once there, easier to block regulations or to demand payment for compliance with them.

Conservatives often style themselves as champions of federalism, and some conservative judges—including Justice Samuel A. Alito Jr. while he served on the U.S. Court of Appeals for the 3rd Circuit—have taken principled stands on preserving local authority over land use. In 1994, Judge Frank H. Easterbrook of the 7th Circuit wrote in frustration: ''Federal courts are not boards of zoning appeals. This message, oft-repeated, has not penetrated the consciousness of property owners. . . .'' It's time for it to penetrate the consciousness of members of Congress.

[From the New York Times, Sept. 29, 2006]

MORE COMFORT FOR THE COMFORTABLE

Congress, which has done so little this session to address the nation's real problems, is expected to vote today on a deeply misguided giveaway for big real estate developers. The bill would create new property rights that could in many cases make it difficult, if not impossible, for local governments to stop property owners from using their land in socially destructive ways. It should be defeated.

The Private Property Rights Implementation Act would make it easier for developers challenging zoning decisions to bypass state courts and go to federal court, even if there was not a legitimate federal constitutional question. Zoning regulations are quintessentially local decisions. This bill would cast this tradition aside, and involve the federal government in issues like building density and lot sizes.

The bill would also make it easier for developers to sue when zoning decisions diminished the value of their property. Most zoning does that. Developers would make more money if they could cram more houses on small lots, build skyscrapers 200 stories tall, or develop on endangered wetlands. The bill would help developers claim monetary compensation for run-of-the-mill zoning decisions on matters like these. It would also make it easier for them to intimidate local zoning authorities by threatening to run to federal court.

Zoning is not an attack on property rights. It is an important government function, and most Americans appreciate that it helps keep their own neighborhoods from becoming more crowded, polluted and dangerous. If more people knew the details of this bill, there would be wide opposition. As it is, attorneys general from more than 30 states, of both parties, have joined the U.S. Conference of Mayors, the National Conference of State Legislatures and leading environmental groups in opposing it.

The bill does a lot of things its supporters claim to abhor. House Republicans were elected on a commitment to states' rights and local autonomy, and opposition to excessive litigation and meddling federal judges. It is remark how quickly they have pushed these principles aside to come to the aid of big developers.

[From the Atlanta Journal-Constitution, Sept. 29, 2006]

FEDERAL COURTS NOT FOR ZONING CASES

In the past, Congress has wisely rejected efforts to force local zoning disputes into federal court. But politically powerful developer groups armed with campaign cash have once again managed to resurrect the idea, and lawmakers in Congress should once again reject it.

Proponents of House Resolution 4772 claim it would help developers subjected to ''takings'' of their land thanks to overly restrictive zoning ordinances passed by local governments. Their dubious proposal would sanctify the right of property owners to do what they wish with their property over the right of communities to protect themselves through zoning against traffic congestion, massage parlors and other problems.

Such disputes are currently settled through negotiation or, failing that, by state court judges who are easily accessible to plaintiffs and defendants. But if passed, the bill would effectively sidestep state courts and grant developers special rights to take their appeals directly to federal courts.

The bill is also intended to intimidate local governments from daring to challenge developers who are often armed with better legal and financial resources.

A majority of the Georgia congressional delegation who favored the bill in a procedural vote taken this week would be wise to reconsider their support. Usurping the authority of county zoning boards certainly won't sit well in a state where the rallying cry of ''local control'' over land use and other issues is especially loud.

A lobbyist for the National Association of Home Builders, a trade group pushing hard for the bill, once bragged that passage of an earlier version would be a ''hammer to the head'' of state and local governments that tried to thwart developers. If Congress votes to pass the bill as the NAHB hopes, the hammer will wielded by voters angered at special-interest legislation that literally strikes them very close to home.

[From the Sacramento Bee, Sept. 29, 2006]

REGULATING LAND USE

HOUSE BILL WOULD BE GIFT TO DEVELOPERS

Here we go again. Since 1994, some members of Congress have introduced bills to redefine local land-use regulations as ''takings'' and to give developers a special fast-track to the federal courts. Currently, developers have to go first to local zoning boards and state courts.

Now a rehash of a failed 2000 bill is being rushed the House floor. Proponents claim it is about stopping eminent domain abuses, but H.R. 4772 is really about hampering the ability of local communities to enforce their zoning and environmental protection rules. Members of Congress should reject this bill, again.

Since 1791, the U.S. Constitution has required government to pay just compensation if it takes private property for public use. So if you own 100 acres and the government takes 98 acres to build a school, it must pay you. But if government rules say developers can only build one house per half acre, that's not a taking. Or if government rules allow development on 98 acres, but not on 2 acres of wetlands, that's not a taking.

H.R. 4772 would change that. Courts no longer would be able to look at the 100-acre parcel as a whole, but would have to look at each lot. So, local government would have to pay developers not to build on every inch in the 100-acre parcel. Taxpayers would pick up the tab for this extortion. If developers didn't get what they wanted from local zoning boards, they'd be able to bypass state courts and go to federal court. Judge Frank Easterbrook, a Reagan appointee in the 7th U.S. Circuit Court of Appeals, dismissed such special pleading in a 1994 case. ''Federal courts are not boards of zoning appeals,'' he wrote. Those who ''neglect or disdain'' their state remedies should be thrown out of court, period.

Congress has turned back bills like H.R. 4772 before, and it should do so again. This bill, like Proposition 90 on the California ballot in November, radically expands ''takings'' and should be rejected.

Mr. Speaker, what we are doing now is undermining longstanding interpretations of the fifth amendment. As we discussed on Monday, on two separate occasions, the Supreme Court has ruled that landowners must pursue remedies for just compensation from the State, and the court has confirmed that a Federal court cannot properly consider a takings claim unless or until a landowner has been denied an adequate remedy. To do so would make cases unconstitutionally ripe for Federal review and also limit a Federal court's ability to abstain from State questions.

But the most disturbing thing about this measure is that the bill elevates the rights of property owners over all other categories of persons with constitutional claims. I know we do not believe that the rights of real estate developers are more important than the rights of other Americans. Perhaps some in this body might feel that way, which is why we are attempting to give developers special protections under an early Civil Rights Act, now known as section 1983, that has not been substantially altered in two generations.

The bill's proponents would like you to believe that the land developers and corporations are the only constitutional claimants that must start in State courts; not the case. The cases involving constitutional challenges to detention and violation of the sixth amendment require you start in State courts. Confinement of juvenile offenders in violation of the eighth amendment is another example of the claims that must first go to State courts.

Today we have been called to task and must stand up against this assault on the principles of federalism. Please study this measure carefully because the Nation's civil rights laws and our Constitution, as well as the principles of federalism, are involved.

Mr. Speaker, I rise—again—in strong opposition to the Private Property Rights Implementation Act. Just three days ago, this controversial legislation was defeated on suspension. Republican leadership did not like this vote, so here we are today taking up the same bill under a rule. With the election right around the comer, the Majority is determined to get the outcome that it wants.

We first took up this legislation in the 105th and 106th Congresses. This legislation was bad policy then and remains bad policy today. My concerns about this bill have not changed since Tuesday. H.R. 4772 is a forum-shopping bill that will only benefit land developers and corporations. This bill undermines longstanding interpretations of the 5th Amendment. And furthermore, this legislation elevates property owners over all other constitutional claimants.

First, H.R. 4772 singles out developers and corporations for a special fast track into federal court. Though it has been characterized as such, this bill is not a response to the Kelo decision. Last November, this House passed a bipartisan proposal in response to Kelo. At that time, there was no discussion of providing homeowners like those in Kelo with expedited access to federal courts and there shouldn't be one today.

The reason why is because H.R. 4772 has nothing to do with homeowners like those in Kelo. This bill has nothing to do with eminent domain abuses. H.R. 4772 has everything to do with land developers and corporations and regulatory takings claims.

If a developer does not like a state or local land use decision, it now has the ability to bypass state and local administrative procedures and jump right into federal court. To quote Jerry Howard of the National Association of Homebuilders, ''This bill will be a hammer to the head of these State and local bureaucracies.''

Second, H.R. 4772 undermines long-standing interpretations of the 5th Amendment. As

we discussed on Monday, two times the Supreme Court has ruled that landowners must pursue remedies for just compensation from the state, in state court (Williamson County (473 U.S. 172 (1985)) and San Remo (545 U.S. 323) (2005)).

The Court has confirmed that a federal court cannot properly consider a takings claim unless or until a landowner has been denied an adequate remedy. To do otherwise would make cases unconstitutionally ripe for federal review and also limit a federal court's ability to abstain from state questions.

But this is exactly what H.R. 4772 will do. This bill will allow regulatory takings claims into the federal courts prematurely. States and localities will be restricted in their land use decisions at the threat of federal litigation. It will be harder for jurisdictions to protect against groundwater contamination, waste dumps, and adult bookstores.

Finally, and perhaps most disturbingly, this bill elevates the rights of property owners over all other categories of persons with constitutional claims. I know we do not believe that the rights of real estate developers are more important than the rights of other Americans. Perhaps some people in this body do, which is why we are attempting to give developers special protection under the Civil Rights Act of 1871, now known as Section 1983—a statute that has not been substantially altered since 1871 according to CRS.

This bill's proponents would like you to believe that land developers and corporations are the only constitutional claimants that must start in the state courts. However, this is just not true. Cases involving constitutional challenges to detention in violation of the 6th Amendment and confinement of juvenile offenders in violation of the 8th Amendment are just two examples of claims that must first go to the state courts.

Today we all have been called to task, and must stand up against this assault on the principles of federalism, the Nation's civil rights laws, and our Constitution.

Mr. Speaker, I ask unanimous consent that the gentleman from New York (Mr. NADLER) be assigned to the management of this bill on the floor on the side of the minority.

The SPEAKER pro tempore. Without objection, the gentleman from New York will control the time.

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. CONAWAY).

Mr. CONAWAY. Mr. Speaker, I thank the chairman. In an attempt to adhere to his admonition that brief is better, I will add my voice of support for this bill.

I represent a rural district in Texas. It is 36,500 square miles. It is 14 percent of the land mass of Texas, and so we have a lot of opportunities for takings from various entities.

I support this bill because most landowners, most developers, simply want answers. ''Yes'' or ''no'' is better than ''wait until tomorrow.'' Once you get hung up in this regulatory nightmare of waivers and permits and permits and waivers and that body and this body, just knowing the truth and what the ultimate answer is would be better.

This law defines that Federal courts have to begin hearing a case once a final answer has been given under a permit or a waiver, and allows access to the court so that the property owner will then be able to get an answer that they can live with.

I support this bill. I encourage my colleagues to also support this bill to protect private property rights and give landowners and other property owners their day in Federal court.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Constitution provides for just compensation where government takes property. On that there is general agreement. There is also agreement that the ability of government to take property must be strictly limited to a public purpose and that the power to take property must be used sparingly and judiciously. Those are not controversial points.

This bill is something different, something radically and dangerously different. This bill goes far outside the bounds of the Constitution to reward big developers and polluters whenever local government tries to preserve the quality of life in our communities by controlling the spread of huge landfills or sprawling subdivisions or factory farms or adult bookstores.

Under this bill, a developer could circumvent local government and normal State court consideration, drag our local governments into Federal court, and demand payment every time our constituents want to preserve their health or quality of life.

The threat of Federal court litigation, expensive Federal court litigation, is real and troubling. One representative of the National Association of Home Developers said this bill would be a ''hammer to the head'' of every local official. That is what this bill does.

It greatly expands the definition of a taking. It would require the government to provide compensation in cases where the Constitution does not. It would allow developers to game the system by arbitrarily dividing their lots to squeeze money out of communities.

Should we have to pay someone to keep them from poisoning our drinking water or ignoring our zoning laws or opening an adult bookstore? That seems to be the claim of developers who want to fill in wetlands at will or build garbage dumps the size of small towns. Is it a taking for which me must compensate the developer if we make them pay their fair share of the cost of the new roads, sewers, water lines and schools that will be needed to support their new subdivision?

Should local taxpayers have to pay a developer whenever any conditions are imposed on a developer before allowing him to move forward? That's what this bill does.

Let's have no doubt this is a big developers' bill. My friend, the sponsor of this bill, has trumpeted the fact that the bill is supported by the home builders, the realtors, the Chamber of Commerce, the National Federation of Independent Business, and the U.S. Farm Bureau.

It is opposed by environmental organizations, the American Planning Associations, consumer organizations, and your mayors, your Governors and your attorneys general of the States. Which side are you on?

One of the majority's witnesses at our hearing on this bill was Mr. Frank Kottschade, a major local developer who complained that he didn't get everything that he wanted from his local government.

Another was an attorney, Joseph Trauth, who represents Wal-Mart, Home Depot and GE in zoning cases. Small developers. He is proud of the fact that he helped the Rumpke landfill in Hamilton, Ohio, expand by 65 acres.

That is who the bill is for, not for homeowners who want to protect their homes and communities.

Let me clear up some confusion. Many Members of this House were outraged by the Supreme Court's Kelo decision which dealt with the use of eminent domain to take private property from one person and give it to another private party in order to promote economic development.

□ 1115

The distinguished chairman spoke of Kelo. This bill has nothing to do with Kelo and nothing to do with eminent domain. It is not about taking property. It is about regulating responsible use of property. It is about stopping the ability of local governments to pass zoning laws, environmental protection laws, to enforce them to protect the local residents against those who would pollute the environment, build every inch and fill our suburban towns with 200-story buildings.

You have heard Kelo discussed in this debate because the real purpose of this bill is simply indefensible. This bill has to do with zoning, environmental protection, and environmental regulation. This is about protecting homeowners from abuse by developers and polluters. The bill, actually, is about stopping the ability of local governments to protect homeowners from abuse by developers and polluters.

I would just note the irony that the Republican leadership the other day moved a bill that would limit the rights of religious minorities under the 1871 Civil Rights Act. This bill expands the rights of developers and polluters under the same 1871 Civil Rights Act and allows them to extort local communities. That is the Republican civil rights agenda.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. CHABOT), the author of the bill.

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding.

I want to, first, thank the gentleman from Wisconsin for his leadership and his cosponsorship of this bill, also the 35 other cosponsors and the 234 Members of this body that voted for it. It passed just the other day by a margin of 60 votes. Now, it needed two-thirds, so that is the reason for our being here today. But there is really overwhelming support. I also want to thank the gentleman from Tennessee, BART GORDON, for his leadership as well in support of this legislation.

Just to address a couple of the points that were made before I get into the bulk of my speech here, the gentleman from Michigan mentioned that this elevates property owners above all other constitutional rights and individuals who are trying to establish their constitutional rights. It doesn't do that at all. It puts them on the same level as other people who have a constitutional right that they are trying to enforce. And they should under existing law already have their constitutional rights. This is a fifth amendment right in the Bill of Rights. A person cannot have their property taken without just compensation, without due process of law, and this is just putting them on the same level with all the other constitutional rights that we enjoy in this country.

The gentleman from New York said that this is radical and dangerous. I would venture to say there aren't too many things that this side has tried to pass in the 12 years that I have served with the gentleman that the gentleman hasn't considered to be radical and dangerous, with some exceptions where we have been on the same side. But I think this is not radical nor is it dangerous.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. CHABOT. I would be happy to yield to the gentleman from New York.

Mr. NADLER. Mr. Speaker, I will concede that when we passed last week my bill to recognize Congress's support for a memorial at the World Trade Center site, after it had been held in committee for 2 years, that was not radical and dangerous.

Mr. CHABOT. Reclaiming my time, Mr. Speaker, as I had indicated, there have been times when the gentleman has not said things we are doing are radical and dangerous, and I agree with that part of what we just talked about.

But the gentleman talks about this being only for big developers and not the little guy, so to speak. I would just note that H.R. 4772, this particular legislation, levels the playing field for small and middle-class property owners and retirees. The expense of bringing a Federal takings claim through the labyrinth of procedures in place today is disproportionately borne by private citizens who cannot draw on the public treasury to defend their rights. This bill, more than any big developer, helps small developers and the middle class, whose finances are particularly strained by the costs of defending their fifth amendment property rights.

This bill helps, for example, elderly retirees who may have all their savings tied up in their home that the government is trying to take away from them for whatever. When their home is unjustly taken by the government, the elderly should not have to spend 10 years paying for expensive lawyers to defend themselves in court. And that is what happens in communities all over this country right now. They should be allowed to go right to the Federal court and defend their federally protected property rights, and this bill would allow them to do just that.

On February 16 of this year, when I authored this, along with the gentleman from Tennessee (Mr. GORDON), this Private Property Rights Implementation Act, and I want to thank the gentleman, as I already did, we introduced this legislation as a result of recent Supreme Court decisions last term, Kelo and San Remo. They, quite frankly, ignored the constitutional rights of property owners.

The fifth amendment to the Constitution, as I stated before, states: No person shall be ''deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.'' And that is exactly what we are talking about remedying by this bill.

The House of Representatives acted to correct the Kelo decision by passing a bill, H.R. 4128, by a bipartisan vote of 376–38. Today, Congress has an opportunity to restore the rights taken away by the San Remo decision by passing this bill which will correct that decision.

Now, here is the problem. Strange as it sounds, under current law, property owners are now blocked from raising a Federal fifth amendment takings claim in Federal court. And here is why: The Supreme Court's 1985 decision in Williamson County v. Hamilton Bank requires property owners to pursue to the end all available remedies for just compensation in State court before the property owners can file suit in Federal court under the fifth amendment.

Then just last year, in the case of San Remo Hotel v. City and County of San Francisco, the Supreme Court held that once a property owner tries their case in State court, the property owner is prohibited from having their constitutional claim heard in Federal court, even though the property owner never wanted to be in State court with their Federal claim in the first place. The combination of these two rules means that those with Federal property rights claims are effectively shut out of the Federal court on their Federal takings claims, setting them unfairly apart from those asserting any other kind of Federal right, such as those asserting free speech or freedom of religion or other rights that could be established under the Constitution.

The late Chief Justice Rehnquist commented directly on this unfairness, observing in his concurring opinion in San Remo that ''the Williamson County decision all but guarantees that claimants will be unable to utilize the Federal courts to enforce the fifth amendment's just compensation guarantee.'' The Second Circuit Court of Appeals has also stated that ''it is both ironic and unfair if the very procedure that the Supreme Court requires property owners to follow before bringing a fifth amendment takings claim, a State court takings action, also precluded them from ever bringing a fifth amendment takings claim in Federal court.

H.R. 4772, the Private Property Rights Implementation Act, will correct the unfair legal bind that catches all property owners in what amounts to a catch-22. This bill, which is based on Congress's clear authority to define the jurisdiction of the Federal courts and the appellate jurisdiction of the United States Supreme Court, would allow property owners raising Federal takings claims to have their cases decided in Federal court without first pursuing a wasteful and unnecessary litigation detour, and possibly a dead end, in State court.

H.R. 4772 would also remove another artificial barrier blocking property owners' access to Federal court. The Supreme Court's Williamson County decision also requires that before a case can be brought for review in Federal court, property owners must first obtain a final decision from the State government on what is an acceptable use of their land. This has created an incentive for regulatory agencies to avoid making a final decision at all by stringing out the process and thereby forever denying a property owner access to the court. Studies of takings cases in the 1990s indicate that it took property owners nearly a decade of litigation, which most property owners, let us face it, especially a small property owner, can't afford, before takings claims were ready to be heard on the merits in any court, whether it is State or Federal.

To prevent that unjust result, this bill would clarify when a final decision has been achieved and when the case is ready for Federal court review. Under this bill, if a land use application is reviewed by the relevant agency and rejected, a waiver is requested and denied, and an administrative appeal is also rejected, so they have gone through this long process, then a property owner can bring their Federal constitutional claim, and, again, this is a Federal constitutional claim, in a Federal court. The bill would not change the way agencies resolve disputes; rather, H.R. 4772 simply makes clear the steps the property owner must take to make their case ready for court review.

This bill also clarifies the rights of property owners raising certain types of constitutional claims in other ways.

First, it would clarify that conditions that are imposed upon a property owner before they can receive a development permit must be proportional to

the impact a development might have on the surrounding community.

Second, it would clarify that if property units are individually taxed under State law, then the adverse economic impact the regulation has on a piece of property should be measured by determining how much value the regulation has taken away from the individual lot affected, not the development as a whole.

Third, the bill would clarify that due process violations involving property rights should be found when the government has been found to have acted in an arbitrary and capricious manner.

This legislation also applies these same clarifications to cases in which the Federal Government is taking the private property. This legislation is endorsed by a number of organizations: the National Association of Homebuilders; the National Association of Realtors; the U.S. Chamber of Commerce; the National Federation of Independent Businesses, which is oftentimes small businesses, most of the time; the United States Farm Bureau; and the Property Rights Alliance.

Again, this legislation passed. A majority of more than 60 votes for this legislation, as opposed to against it just a couple of days ago.

Again, I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership and also the gentleman from Tennessee (Mr. GORDON) for his leadership.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from New York.

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Speaker, I rise in strong opposition to this bill. This bill is a bad idea that comes before us periodically but, happily, has never been enacted. And I hope it meets a similar fate this time.

This bill is, quite simply, an effort to take away the rights of each and every property owner who wants to alter or even block an unwanted development. It should really be called the ''Private Property Rights Obliteration Act.''

If you are a homeowner and you would like a new mall or a new apartment building to be a little smaller so it does not overwhelm your neighborhood with traffic and all the other attendant problems, this bill will make it next to impossible for you to succeed. If you are a homeowner and you don't want a bar to be built right around the corner from your house, this bill will make it almost impossible to succeed. If you are a small businessman and you want to control where a big-box store is going to be built, this bill will make it almost impossible for you to succeed.

In 2000, the last time we debated this, the developers, quite rightly, described this bill as a hammer to the heads of local officials who are trying to guide and manage development. It is a very dangerous bill.

It is also a very odd bill. Here we have supposed conservatives begging Federal courts to intervene in the most local of matters. Why? So that the developers can scare localities into not doing their most fundamental jobs.

Now this time around, the proponents of the bill have come up with some new ingenious arguments for the bill. The only problem is that these arguments are wildly inaccurate. So let me make this clear to my colleagues: This bill does not deal at all with eminent domain or property seizures or the Supreme Court's Kelo decision. Let me restate that, it is so important: This bill does not deal at all with eminent domain or property seizures or the Supreme Court's Kelo decision, which was decided years after the bill was written.

This bill is only about localities exercising their zoning authority. It is not about localities taking property by eminent domain.

And by the way, the substantive problem in Kelo was that a developer was kicking people out of their homes. This bill would only strengthen the hand of developers to an unprecedented degree.

So let us not undermine our Nation's neighborhoods and localities with this unprecedented and radical change in law. Let us listen to all the local governments and environmental groups that have always opposed this bill. Let us make sure our constituents retain their ability to shape their own neighborhoods. Vote ''no.''

□ 1130

Mr. NADLER. Mr. Speaker, I yield 5 minutes to the gentleman from Oregon (Mr. BLUMENAUER) who has been instrumental in local development, planning efforts in local government.

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy. Our friend from New York set the right tone.

Basically I must respectfully disagree with the chairman of the committee. Maybe everything has been said, but I do not think everything has been heard. That is why his attorney general joined with 35 other attorneys general in saying this is flawed, unnecessary, dangerous legislation.

They basically flunk Property Protection 101. It ignores the fact that planning and zoning is to protect everybody's property. Now, the gentleman from Cincinnati would not yield to me. I wonder, if I yielded him 30 seconds, if he would answer a question.

Mr. CHABOT. It is your time.

Mr. BLUMENAUER. Does Hamilton County or the City of Cincinnati have any protective zoning and planning mechanisms that occasionally require more than one decision to be able to reach a rational decision? I yield 30 seconds to the gentleman

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding. We have the same zoning laws that are in many other places around the country. There is an appeals process that we go through, and there is a three-step process under this particular legislation: You have to be denied. You have to then appeal. You have to go a third level. And if you lose at all of those, then the owner has the option to go to either State court or Federal court under this legislation, which seems perfectly reasonable.

Mr. BLUMENAUER. My question is, in Hamilton County or Cincinnati, does it ever occur that there are other activities locally in dealing with the local planning and zoning process that would require an additional step or two? I yield 30 more seconds.

Mr. CHABOT. Of course there are. We have various zoning boards. We have various agencies. We have the same basic things in our community that most of the other communities have. And I was on the community commission. We have appeals of all kinds of nature at all times.

Mr. BLUMENAUER. I appreciate the gentleman's clarification, because I have the same experience you have. I was a county commissioner. I was the commissioner of public works for the City of Portland. I had example after example where there were imperfect applications that were thrown over the transom. I can think of one where there was a massive shopping center that was going to be in an industrial area where they wanted a zone change that required extensive efforts to protect everybody's property protection.

I find it outrageous that you are going to be proposing, under your legislation, short-circuiting that local property protection.

It is ironic that the same committee is telling us that the Supreme Court is not competent to deal with issues of marriage, same-sex marriage. It is not competent to deal with something as complex as the flag amendment. Somehow you are going to be rocketing proposal after proposal into the Federal courts where the Supreme Court has already said that it is not the best place to deal with things that are uniquely local and State in nature.

It is not the small property owner that is going to benefit from this. The little old grandma that you are talking about in the first instance is not filing complex planning and zoning proposals, in the main. This will be utilized by large developers who can wear down communities. And we have seen it happen. When it happens to small communities, where all of the fire power that was arrayed before the Judiciary Committee comes to bear, wearing them down, it is going to make it very difficult to provide those local protections.

Now, Mr. Speaker, that is why unions, planning associations, Clean Water Action, why the Defenders of Wildlife, over a dozen other environmental and conservation groups, including the Trust for Historic Preservation, and as I mentioned 36 attorney

generals, including Mr. CHABOT's attorney general in Ohio, say this is flawed and unnecessary legislation.

Mr. Speaker, I would respectfully suggest that rather than trying to drive a wedge into the planning process in local communities, processes that are designed to help to provide protections for everybody, I would strongly suggest that this legislation be rejected.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 15 seconds just to amplify the fact that my Democratic attorney general was just defeated in the primary, and I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 45 seconds to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I would point out that there are 35 other attorney generals that are Republican and Democratic, from Alabama, from Connecticut, from Iowa, Louisiana, Maryland, Massachusetts, Maine, Kentucky, noting the gentleman in the chair, from Idaho—I think he is a Republican—Delaware, Arizona, Alaska, Michigan, Montana, New Jersey, New York, Oregon, Rhode Island, Tennessee, Oklahoma, New Mexico, Nevada, Mississippi, Utah, Vermont, West Virginia, Wyoming. I mentioned Wisconsin, and I do think we ought to reemphasize again Ohio, the home State of the sponsor of this legislation. All these attorneys general oppose this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. CHABOT) who I think is right, and his attorney general is wrong.

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, if the gentleman is bringing up statewide office holders in Ohio for credibility purposes, I think the gentleman should probably review the political situation in Ohio and some of the stature that some of those folks hold right now. If you are making an argument to support your side of the case, there are a number of them that are let's say not at the height of popularity as we speak here today.

But just to mention a couple of things that the gentleman touched upon, especially the environmental concerns, for example. There is nothing in this bill that would prohibit the protection of land for environmental, health and safety reasons.

However, if the land is so regulated as to deny the owner any use of it, then, yes, the owner needs to be paid just compensation. The fifth amendment does not have an exemption for environmental laws or any other laws. In fact, the best approach would be to purchase the land, possibly through eminent domain, rather than trying to pull a fast one and harm the property owner or take that person's property without just compensation.

The basic idea is that individual property owners should not bear all of the costs of protecting our communities. A few land owners should not have to sacrifice their own land and economic well being for the betterment of a town or a city; rather, the town should give them just compensation. That is what we are supposed to do in this society.

If we are taking it from a particular individual, and they cannot use their land as they want to see fit, the rest of us, through the appropriate way, should give them just compensation.

The fifth amendment should apply in all taking cases, and we should not be carving out exceptions when it comes to public health and safety, just like in the Kelo legislation we passed; we did not carve out exceptions for the private use of eminent domain because some property is not as desirable to the community at large. All property should be treated the same.

And if there is public health or environmental needs to take the land, owners should be compensated for its taking. There are limits to what the government can do. And that limit is called the Bill of Rights. When the government takes private property, owners must be fairly compensated for their land.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. FARR).

Mr. FARR. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong opposition to the bill. I represent some beautiful communities in California: Carmel, many of you know, Pebble Beach, Santa Cruz, communities that have built their aesthetics around regulation. And I sat as a county board of supervisor having to manage these recollections.

The author of the bill is right. We have eminent domain. When there is taking, you get compensated. What his bill is about is protecting developers at the expense of property owners. This is going to decrease property values. Decrease property values.

Because you get them to pay for every kind of regulation. Now, all of us know that when you get a benefit, you do it with a responsibility. You get a driver's license, but that does not allow you to drive over 65 miles an hour. In this case, you would have to pay someone, because they bought a car that can go 100 miles an hour, you have to pay them the difference between 65 and 100.

That is what this kind of bill is about. What is the taking? Is it requiring that the trees be left standing? Is it required to have a little bit of a setback? This bill injures property values and should be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, it is difficult to understand my friends on the Republican side of the aisle's efforts to stick this burden on the taxpayers and allow developers to do the equivalent of developer's gerrymandering to increase their profits. Why should the taxpayers have to succumb to developers doing to the taxpayers what politicians have done to the voters?

Politicians, what they have done to the voters is carved out these little districts to try to keep their seats safe. If this bill were to become law, which it will not, it will allow developers to carve up their little development, fancy little lines to extract the maximum amount of money from the taxpayers.

Where is the reason to allow developers to decide their own rules, to write their own paycheck from the taxpayers? We have laws on the books enforced by supreme courts that say that, if you have your property taken as a whole, you get compensation. But this bill will game the system, will create this arbitrary system where the developer decides, not the courts, and that is a massive gambit to allow the guy who wants to build a strip club or a gambling spot or a strip mall in your neighborhood to make it impossible for your local community to have meaningful zoning to protect your neighborhood.

And it is done for one single reason, to put money in developers pockets in a way that is not fair. And, by the way, this is not about grandma out in her backyard. It is about people wanting to break up large chunks for a subdivision, and decide that they are going to take a wetlands. Right now, if there is a wetlands, and we have lost humungous amounts of wetlands in the last couple hundred years; whether there is a taking depends on the whole property.

Do not allow this gambit to take place. It is not fair. It is not Constitutional, and it is not going to pass.

Mr. NADLER. Mr. Speaker, how much time is remaining?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from New York has 9½ minutes remaining. The gentleman from Wisconsin has 13 minutes remaining.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I looked at the website of one of the witnesses that Mr. CHABOT brought from Cincinnati, and looked at a couple of the things that he has been successful in achieving, as significant expansion in a landfill, siting a 1,000-foot radio and TV tower.

These are the sorts of things that I worked on as a county commissioner; I assume Mr. CHABOT worked on when he was a county commissioner. It took years, for example, for us to deal with sitings for radio tower emissions because local people, neighbors and representation from industry were going crazy.

But the lengthy process was worth it; we produced the safest standards in the

country that the industry ultimately adopted. Using Mr. CHABOT's approach, it would allow those powerful interests to have bypassed us and gone to Federal court. We could not have stood up to them.

The neighborhood would have been at risk. It is exactly the sort of thing that people elect local officials like we used to be to protect. I think it is outrageous that Congress is going to undermine them.

□ 1145

Mr. SENSENBRENNER. Mr. Speaker, once again I yield such time as he may consume to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding. I just make two quick points.

The gentleman from Oregon disparages the reputation of the gentleman who testified at the committee, Mr. Trauth, who was an attorney, on the types of cases that he takes. I would just note that I oftentimes agree with people who come and testify, disagree. They are lawyers. They represent various sides.

Mr. BLUMENAUER. Mr. Speaker, will the gentleman yield?

Mr. CHABOT. I yield to the gentleman from Oregon.

Mr. BLUMENAUER. Mr. Speaker, I was not disparaging the gentleman. I was talking about his cases that he advertised.

Mr. CHABOT. Reclaiming my time, I happen to know that he also represents people that are at lower income levels that maybe are having their houses taken away by somebody. As all lawyers do, they represent a whole range of cases.

And the other gentleman from Washington talked about how awful this legislation the Republicans are trying to pass is. I would just note to the gentleman that there were 37 Democrats that voted for this legislation just the other day.

I thank the gentleman for yielding.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is important to get this debate back on track as to what we are talking about, not what we are not talking about, because the gentleman on the other side keeps bringing up matters that were not debated, that is not before us in this bill.

This bill has nothing to do with Kelo. It has nothing to do with whether there should be compensation for a taking. If the government wants to take your house for a new highway, they have got to pay you. That is the fifth amendment. If the government wants to take your house to give it to somebody else to build something that they judge for public purpose, the Supreme Court said they can do it in Kelo. A lot of people do not like it. That is the Kelo controversy. That is not this controversy.

This controversy has nothing to do with that. This controversy is saying the following: If local government passes regulations legislating land use, you cannot destroy a wetland; you cannot build a building more than 50 stories tall; you cannot build more than five houses on an acre, because it is a suburb and we do not want too much crowding; you cannot build a factory next to the houses; you cannot build a mine in a residential neighborhood. These are limitations on the use of property. It does not say you cannot use your property. It says you cannot build a mine here or you can only build 5 houses on that lot, not 2,500 houses.

Should these kinds of limiting regulations that governments all across our land grant all the time in order to protect local homeowners, in order to protect local property values, in order to protect the quality of life in local communities, should these laws remain possible? This bill says they should not remain possible.

This bill says that in two ways. One, we are going to drag the local community into Federal court where, contrary to the implications of the other side, it is a lot more expensive to litigate generally in Federal court than it is in a local court. So we are going to say that if the megadeveloper who wants to build 300 homes or 50 stories or 100 stories on that local lot next to your house, against the local zoning, he can take you right into Federal court, make you spend a lot of money and not go through the local process and not go through the local court process. That is very dangerous.

That is why the proponents of this bill, the home builders, said this is a hammer to the head of local officials. It is intended to be a hammer to the head of local officials. And who do the local officials represent? The local people who care about their property value, that is who they represent. But we are going to put a hammer to their heads because to hell with the property values of our local communities; to hell with the local planned development; we do not want big developers to be inhibited from building 300 houses on an acre instead of only three or four or whatever the local zoning code says.

Secondly, question: Is it a taking? The big developer buys 100 acres, has a 100-acre plot, two of them are a wetlands. The local government says or the law says you cannot build on the wetlands, you can only build on 98 of your 100 acres. The Supreme Court has always said you look at the totality of the property to determine whether that is a taking requiring compensation, and it is not, because you can build on 98 percent of your property, until this bill comes along and says no you cannot; you can subdivide the lots and if you want to protect that wetland, you have to pay for it.

The bill also says, in effect, that if you want to say that you cannot build 100 houses on that property, you can only build 10, you have to pay the developer for the difference between 10 houses and 100 houses, 90 percent.

Now, Mr. CHABOT says, well, why should the government not pay the property owner if he cannot use his property. Well, the issue is not that. The issue is why should the local government, which wants to regulate or limit use of property in certain ways, have to pay the difference between what they say you can do with your property which they are not taking and everything conceivably you could do?

If the answer is yes, no local government will be able to pay that, no local community can pay that, and you cannot have local land use regulations, you will have to have the 50 story building there because no one can stay the difference between a 10-story limitation in the zoning instead of 50 on every lot.

So this is a question of whether you can have local language regulation, whether you can protect local communities at all.

Finally, let me say that this bill is clearly unconstitutional because this bill says you go right into Federal court. In the Williamson decision in 1985, the Supreme Court held that a takings claim, a claim that you are taking property without due process of law, is not right for Federal court review if the property owner had not obtained a final decision from the appellate administrative agency and the property owner had not first filed the claim in State court to challenge the government action. The court held that these requirements are constitutional requirements, not statutory. We cannot give them the right to go straight into Federal court because the rule, the court said, is compelled by the very nature of the inquiry required by the just compensation, that is, the takings clause, because the fact it is applied in deciding a takings claim simply cannot be evaluated until the administrative agency has arrived at a final decision regarding how it will apply the regulation it issued for the particular land in question.

Just 7 years ago, in 1999, the Supreme Court said again, a Federal court cannot entertain a takings claim under section 1983 or unless or until the complaining land owners are denied an adequate ''deprivation remedy,'' in other words has been denied State court review.

So by forcing the case right into Federal court this is clearly unconstitutional.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Speaker, I thank the gentleman for yielding.

I am pleased to rise in support of H.R. 4772. I am pleased to be an original cosponsor and want to commend Mr. CHABOT and Mr. SENSENBRENNER for shepherding this legislation through.

In Arizona, between State, Federal and Indian reservation, private property extends to less than 20 percent in the State, and so we take private property very seriously there because we

cannot afford to lose too much more of it.

So, when we have had the recent Kelo decision and other decisions that have eroded private property rights over the past couple of years, we feel that we need to respond in this way, and if the Federal Government has provisions which erode those private property rights then somebody ought to have a remedy through the Federal courts. And that's what this legislation is about.

I commend the sponsors for pushing it through, and I would encourage support for it.

Mr. NADLER. Mr. Speaker, just to clarify, this bill does not simply deal with sending cases to Federal courts. It deals with the substantive law to be considered there.

Mr. Speaker, I yield 30 seconds to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I just want to clarify. I find it interesting that my colleague from Cincinnati somehow thinks that, because I noted his witness represents people siting radio towers in landfills, that I was disparaging him. I did not say anything like that. I gave real-life examples of why his bill is going to destroy property values.

If you have a 1,000-foot radio tower next to you or a landfill expansion, in your home town that may make one person more money, but it has the potential of eroding the protections of everybody around them. Those are the real-life examples that they refuse to acknowledge.

Mr. NADLER. Mr. Speaker, I am pleased to yield 1¼ minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, there is a lot of anger about eminent domain law right now because of the Kelo decision, and I am one of the people who disagrees with that decision. I do not believe it is wise to allow eminent domain to be used for private purposes, and I think it was a poorly decided decision.

But I want to make sure that the Members understand. This bill does nothing to fix that problem. If you are angry about Kelo, this bill is not medicine. It does nothing to change the standards for when eminent domain can be used by Federal or municipal governments.

So this does not solve the problem, and I want to yield to Mr. CHABOT, if I could, for a moment. I just want to make sure that we are on the same page on this. I have looked diligently through this and can find nothing that changes the eminent domain standard that would overturn the Kelo decision.

Do you agree with me on that assessment?

Mr. CHABOT. Mr. Speaker, will the gentleman yield?

Mr. INSLEE. I yield to the gentleman from Ohio.

Mr. CHABOT. I agree that this is not directly related to Kelo, although there is, I think in many people's minds, some connection, and I think rightfully so.

Mr. INSLEE. Mr. Speaker, I want to make clear it is not the impression in people's minds that counts in Congress. It is what is in people's bills, and in this bill is nothing to solve the Kelo problem.

We should not let anger about Kelo allow developers to game taxpayers. This bill should be rejected.

Mr. NADLER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this bill deals with when a government exercises zoning power and the big developer disagrees with that, what happens. It says you go into Federal court right away, which is more expensive for the local government to defend, and which is unconstitutional, as I mentioned a few minutes ago, because you have to go through the State remedy.

But second of all, it changes the substantive law to enable the developer to say that any reduction in his use of the property, that says you cannot have more than X number of houses on the property or you cannot destroy all the wetlands on the property, anything that will help preserve the local communities, all the regulations it would depend on to preserve property values, to preserve local communities, they are all gone because you have to pay for them and no local government is going to pay for them.

So nobody is going to be able to go to their local zoning board and complain. They will have to go to the Supreme Court, which will not have time for them.

Mr. UDALL of Colorado. Mr. Speaker, Colorado has been one of the fastest-growing States, and we have our share of contentious land-use disputes—in fact, sometimes it seems we may have more than our share.

And I do think the federal government has a role to play in helping our communities to respond to the problems that come with that rapid growth.

But I don't think the help that's needed is greater involvement of the federal courts in more and more local land-use decisions. And that's what this bill is all about.

This bill does not deal with the questions about use of eminent domain for economic development projects that were involved in the case of Kelo v. New London which attracted so much attention when the Supreme Court issued its decision last year.

I voted for a resolution (H. Res. 340) expressing disapproval of that decision, and for a bill (H.R. 4128) that responded to the decision by barring any state or political subdivision from exercising its power of eminent domain for economic development if that state or political subdivision received federal economic development funds. That bill also would make a state or political subdivision violating that prohibition ineligible for any such funds for two fiscal years, bar the federal government from exercising its power of eminent domain for economic development, and establish a private cause of action for any private property owner who suffers injury as a result of a violation of the bill.

I thought that was an appropriate response to the Kelo decision. But this bill is quite different, and I cannot support it.

I do not think it is needed. The vast majority of land-use disputes, including claims that local regulations or decisions amount to a "taking" of property, are resolved at the local or state level without significant delay.

There is no need to short-circuit the decisionmaking process under local and state law. There is no need to bypass our state courts, because, as noted in a letter signed by Attorney Generals of 32 States, "State courts . . . are ideal forums for resolving disputes involving state and local planning issues [and] . . . the bill thus runs counter to the admonition of Justice Alito . . . that the federal judiciary should avoid procedural rules under which it could be 'cast in the role of a zoning board of appeals.'"

I also don't think the bill is sound policy. I am very concerned that it would severely tilt the field in favor of one interest, developers, and make it even harder for our communities to meet the challenges of growth and sprawl. It would saddle taxpayers of our towns, cities, and counties with the costs of expensive federal litigation. That's one reason it is opposed by the Colorado Municipal League as well as the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the National Council of State Legislatures, and the Council of State Governments.

It's also not good for our federal courts. When the House considered similar legislation previously, the Judicial Conference of the United States—the body that speaks for our federal judges—said it "may adversely affect the administration of justice" and "contribute to existing backlogs in some judicial districts."

Finally, as a non-lawyer who takes very seriously the oath we all have taken to support the Constitution, I have listened carefully to the views of the many lawyers—including distinguished Members of the Judiciary Committee—who have concluded that the bill is likely unconstitutional.

Even if I thought the bill was otherwise desirable, that would make me hesitate. But, as I've said, the bill has other serious shortcomings—and the constitutional issues that have been raised mean that enacting this bill would inevitably lead to even more protracted and expensive litigation that would go all the way to the Supreme Court. However the Court might finally rule, that additional litigation is not something that I think is necessary or that Congress should encourage. So, again, I cannot vote for this bill.

Mr. SMITH of Texas. Mr. Speaker, I support this legislation which was introduced by Congressman CHABOT. It protects the Americans' private property.

The Bill of Rights guarantees the right to private property. Such a right lies at the foundation of a democracy where citizens have the freedom to buy, sell, exchange, or make a profit on all forms of property.

In recent years, it has become more and more common for the government to seize private property under the guise of eminent domain for "public" use.

This is something that landowners in my home state of Texas are already frequently faced with under the Endangered Species Act, which prevents a landowner from developing

their property if an endangered species is found on the land.

Under last year's Supreme Court decision in Kelo, state and local governments now can take property from a private landowner in order to give or sell it to another private owner. So, we need to make sure Americans can protect their private property ownership.

The Private Property Rights Implementation Act of 2006 clarifies current law in order to give America's property owners those tools.

For instance, H.R. 4772 corrects an anomaly created by two Supreme Court decisions that prevents a property owner from having their federal takings claim decided in Federal Court without first pursuing the case in state court.

And the legislation clarifies that the standard for due process claims in a takings case is ''arbitrary and capricious'' and not the much higher ''shocks the conscience'' standard that some courts are using and that almost no property rights case can meet.

The bill also clarifies what constitutes a ''final decision'' on an acceptable land use from a regulatory agency for purposes of being able to take the claim to federal court.

Some regulatory agencies have avoided making such ''final decisions'' in order to prevent the property owner from moving forward with the property rights claim.

H.R. 4772 is a good bill that will protect Americans' property rights.

Mr. Speaker, I thank Congressman CHABOT for offering this legislation, and urge my colleagues to support it.

Mrs. MALONEY. Mr. Speaker, I rise today in opposition to H.R. 4772, the ''Private Property Rights Implementation Act.''

This bill strips local governments of their authority to enforce zoning regulations by allowing real estate developers to bypass the State courts and go directly to Federal courts to challenge local zoning decisions. While I strongly believe in the rights of property owners, zoning is an important tool of local governments to maintain livable communities where residents and businesses can coexist.

The city of New York opposes this legislation because it would intrude upon its authority over local land decisions. Additionally, this bill is opposed by a coalition of groups including the League of Conservation Voters, the National League of Cities, the U.S. Conference of Mayors, and the National Conference of State Legislatures.

I am puzzled about why the Republican Majority feels that this bill should be voted on before we adjourn when there are so many other issues like increasing the minimum wage and implementing the recommendations of the 9/11 Commission that have yet to be considered by this body.

I urge my colleagues to vote ''no.''

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for yielding. I appreciate this opportunity to explain my concerns with the bill, H.R. 4772, the Private Property Rights Implementation Act of 2005. I oppose the bill because I am concerned that it will weaken local land use, zoning, and environmental laws by encouraging costly and unwarranted ''takings'' litigation in Federal court against local officials.

Mr. Chairman, H.R. 4772 would fundamentally alter the procedures governing regulatory takings litigation. Those procedures are required by the U.S. Constitution and have been repeatedly reaffirmed by the U.S. Supreme Court, as recently as last year. The bill purports to alter these requirements by giving developers, corporate hog farms, adult bookstores, and other takings claimants the ability to bypass local land use procedures and State courts. Indeed, the National Association of Home Builders candidly referred to a prior version of the bill as a ''hammer to the head'' of local officials. Developers could use this hammer to side-step land use negotiations and avoid compliance with local laws that protect neighboring property owners and the community at large.

In addition, section 5 of the bill purports to dramatically change substantive takings law as articulated by the Supreme Court and other Federal courts by redefining the constitutional rules that apply to permit conditions, subdivisions, and claims under the Due Process Clause. The existing rules, developed over many decades, allow courts to strike a fair balance between takings claimants, neighboring property owners, and the public. The proposed rules would tilt the playing field further in favor of corporate developers and other takings claimants, even in the many localities across the country where developers already have an advantage.

As a result, H.R. 4772 would allow big developers and other takings claimants to use the threat of premature Federal court litigation as a club to coerce small communities to approve projects that would harm the public. By short-circuiting local land use procedures, H.R. 4772 also would curtail democratic participation in local land use decisions by the very people who could be harmed by those decisions.

The bill also raises serious constitutional issues. The provisions that purport to redefine constitutional violations ignore the fundamental principle established in Marbury v. Madison (1803) that it is ''emphatically the province and duty'' of the Federal courts to interpret the meaning of the Constitution. Moreover, under longstanding precedent, a landowner has no claim against a State or local government under the Fifth Amendment until the claimant first seeks and is denied compensation in State court. Federal courts would continue to dismiss these claims, as well as claims that lack an adequate record where claimants use the bill to side-step local land use procedures. The bill will create more delay and confusion by offering the false hope of an immediate Federal forum for those who have not suffered a Federal constitutional injury. In short, this bill is a great threat to federalism, our local land use protections, neighboring property owners, and the environment. Therefore, I urge my colleagues to vote against the bill.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 1054, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. NADLER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5631) ''An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes.''.

MILITARY COMMISSIONS ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 1054, I call up the Senate bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 3930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.